

# **Liberal window-dressing or administrative “fire-alarm”?**

The Egyptian Mixed Courts, 1882-1906

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## Abstract

Born out of European desires to shape Egypt's economy and Egyptian attempts to curb the consular court system's jurisdiction, the Mixed Courts were a complex institution deeply enmeshed in the history of the British colonial project. A civil and commercial courts system established to resolve disputes between foreign and native litigants, the Mixed Courts touched all corners of Egyptian economic life in the late 1800s and early 1900s. In this thesis I examine the Mixed Court's role in and relationship with the British colonial government over the first quarter century of colonial rule. I argue that the Mixed Court system initially acted as an administrative “fire-alarm” to allow centralized oversight of lower level, often Egyptian, bureaucratic actors. As British security policy priorities shifted over time, however, the Mixed Courts increasingly functioned as liberal window-dressing to facilitate administrative supervision over the Interior Ministry. In the end, the Mixed Court's legacy is one of nascent rule of law interrupted by British political concerns. This study raises questions about the effect of a third-party's security agenda on judicial institutions and the development of the rule of law.

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# 1 Introduction

“One of them protested: ‘Our fathers have been imprisoned. We won't study law in a land where law is trampled underfoot... Down with the Protectorate!’”

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Naguib Mahfouz, *Palace Walk*

In January 1901, the Egyptian government accused two Greek traders by the names of Nicolas and Constantin Psilas of illegally smuggling hashish into Egypt. The government's claim? The brothers had failed to pay entry tariffs when transporting the hashish into the country. There was no question whether the traders were guilty. When caught with the illegally imported substance by police, the Psilas brothers attempted to stuff the hashish into their clothing. Appearing before the Mixed Court's Court of Appeals, the defendants claimed immunity from fines because of Greece's most-favored nation trading status with the Ottoman Empire. Although the Mixed Court's appellate court ultimately denied their request, this case perfectly illustrates the traditional understanding of the role and purpose of the Mixed Courts: providing foreign citizens with unique access to judicial institutions that favored its foreign participants.

Yet, within the same month that the Psilas brothers attempted to avoid smuggling fines, the Court of Appeals also ruled on more mundane disputes. That January the court reviewed disputes involving public establishment and thoroughfare regulation. Previous scholarship on the Mixed Courts rarely focuses on these quotidian types of cases. As a result, the traditional understanding of the courts excludes the everyday interaction of the institution with the population. In fact, the court document data which includes the more mundane cases suggest the Mixed Courts did not solely produce judicial outcomes favorable to European litigants. Instead, the courts performed oversight on the colonial bureaucracy using rule of law mechanisms to enforce centralized review. The Mixed Courts also helped consolidate the colonial administration's illiberal policing power over the course of the British colonial administration's presence in Egypt. In addition to helping us understand the Mixed Court's relationship with the colonial government and the government's policies toward its citizens, court documents are windows into the social history of Egypt under British colonialism. The courts' function and legacy expands our understanding of Egypt's rule of law development, and can be seen as a model for understanding the development of the rule of law development across the region. Despite its importance in the Egyptian governance landscape, the Mixed Courts are an understudied institution in nineteenth-century Egyptian political development [Hanley, 2017].

The Mixed Courts of Egypt were a civil and commercial court system established to resolve disputes between foreign, usually European, and indigenous litigants. Negotiated for ten years prior to the 1876 debt crisis, emerging less than a decade before the newly created British protectorate and surviving until their integration into Egypt's central judicial system in 1949, the Mixed Courts are invariably entwined with the consequences of European economic meddling and British colonialism in Egypt. At their founding the Mixed Courts represented the manifestation of Egyptian desires to control the consular court system inherited from the Ottoman Empire and to establish a court system based on the Napoleonic Code in order to modernize Egypt's state bureaucracy [Brown, 1995], while balancing European powers' desire to promote European capital and commercial interests in Egypt [Hoyle, 1985]. By the Mixed Courts closure in 1949, the dissolution of the institution

heralded Egypt's complete independence from the United Kingdom and the end of direct foreign intervention.

The Mixed Courts touched all corners of Egyptian life in the late 19th and early 20th centuries. Members of the royal family, rural farmers, European consular officials, city merchants, and Egyptian civil servants all appeared before the Mixed Courts with some regularity. Composed of majority-European judicial panels, the courts adjudicated disputes related to government pensions, personal debts, public infrastructure regulation, and much more. The Mixed Courts formed an integral part of the everyday governance of Egypt under the British protectorate. For example, as the protectorate Egyptian government sought to expand its canal system in the Nile Delta, religious endowments filed suits against the government's right to seize their land in the Mixed Courts, local companies relied on the courts to enforce the non-compete clause of contracts, and farmers sought compensation for damaged crops as a result of the irregular irrigation patterns. The Mixed Courts system also dealt with issues of greater rarity, adjudicating disputes between the Khedive and his European creditors as well as a lawsuit between the protectorate Egyptian government and participants in the Urabi revolution. Given the wide variety of litigants before the Mixed Courts, the institution came to play a significant role in shaping government regulation of economic and social activity for everyday Egyptian and foreign citizens.

Using a data-driven approach, this paper analyzes the role of the Mixed Courts' in British colonial administration over Egypt. This project's puzzle is as follows: the Mixed Courts were established to systematize indigenous-foreign disputes across various nationalities, yet little is known about the outcomes and consequences of this systemic approach. Who did the system favor, and how did the court's bias fit into its role in colonial governance? To test these questions, I turned to a mixed-methods approach using machine differentiated groups and hand-coding of the Mixed Court's Court of Appeals' records. From the collection of OCR-scanned documents containing records of the court's cases from 1878 to 1908, I used natural language processing (NLP) methods to identify over 3,000 individual cases written in French and Italian. Utilizing similar methods I gathered the information on each case, such as the case's litigants, the head judge presiding over the case, the date it was decided, etc. This machine-coded data set forms the basis of this paper's descriptive analysis in Chapter 4. From this initial data set I identified four-hundred and fifty cases involving a colonial government entity. For these cases involving the colonial government I manually coded additional case features such as which party won the case, who paid for the court's costs, and the citizenship of the litigants. This mixed-methods data set covers cases heard by the Mixed Courts' Court of Appeals from 1882 to 1906 involving a government litigant. The mixed-methods data set forms the backbone of this paper's quantitative analysis in later chapters.<sup>1</sup>

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<sup>1</sup> Before jumping into the discussion on the Mixed Courts I would like to elaborate on my data source and methodology for this paper. The analysis in the subsequent sections utilizes machine-gathered and mixed-methods data sets collected from the court records of the Mixed Courts' Court of Appeals. *Jurisprudence des tribunaux de la réforme en Égypte: recueil officiel: arrêts de la Cour d'appel d'Alexandrie* serves as the primary source material for this project. Found on the HathiTrust's online database, the source material contains case records of individual cases which appeared before the Court of Appeals from 1887 to 1908. Each entry notes the case's relevant facts, the legal arguments presented, identifying information on the participants, the rationale behind the court's decision, the name of the case's head judge, and when the case was decided. The documents on the HathiTrust's are OCR-scanned and available online, while the original documents are stored in libraries at Harvard and the University of Michigan. Neither library are certain of the source's providence, but it likely comes from a 1911 donation by the Marquis de Olivart, a Spanish judge specializing in international law.

Using Natural Language Processing (NLP) methods on the OCR-scanned documents found on the HathiTrust, I extracted key data points for over 3,000 of the cases described in the French and Italian source material. In this

By compiling and analyzing primary source Court of Appeals records from 1882 to 1906, I find that the British colonial government used the Mixed Courts as an administrative “fire-alarm” system to monitor lower-level bureaucratic actors [McCubbins and Schwartz, 1984] and cement their control over the Egyptian government. Despite the overall presence of a rules-based administrative “fire-alarm” system, the Interior Ministry is significantly more successful and efficient than other Egyptian bureaucratic agencies. The ministry's highly successful record and efficient processing time complicates the image of the Mixed Courts as an administrative “fire-alarm” system predicated on an understanding of the rule of law. In fact, the evidence suggests that as time wore on the courts increasingly rubber-stamped the Interior Ministry's illiberal policies. By the beginning of the twentieth-century, the Mixed Courts acted as liberal window-dressing for the ministry's draconian policies and police practices.<sup>2</sup>

Taken together, the Mixed Court's overall administrative “fire-alarm” nature and its liberal window-dressing function for the Interior Ministry reflect the British colonial administration's conflicting hierarchy of interests in Egypt. On one hand, the British sought to promote colonial oversight over lower level Egyptian bureaucratic actors by establishing administrative “fire-alarm” courts in the colony. On the other, an aggressive police bureaucracy camouflaged by a liberal window-dressing court facilitated colonial control over a minor colonial holding critical to India's security. This study concludes that a fluid set of policy goals shaped the British colonial administration's relationship with the Mixed Courts. Initially, the British administrators bolstered the court's rule of law capacities to improve oversight. As time progressed, however, the Interior Ministry's approach came to increasingly dominate the relationship between the Mixed Courts and the colonial administration.

This paper will proceed as follows. Chapter 2 provides an overview of institutional dynamics of court systems, while Chapter 3 discusses theories on the role of the Mixed Courts from the perspective of the British colonists. Chapter 4 delves into the courts' function in the colonial project as well as the historical narrative surrounding the establishment and functioning of the Mixed Courts. Chapter 5 evaluates the application of the administrative “fire-alarm” and liberal window-dressing models to the Mixed Court's relationship with the colonial government. Chapter 6 builds on this analysis and includes policy-relevant parts of this discussion. Finally, Chapter 7 concludes and offers lasting thoughts on the role of the courts in Egyptian rule of law development.

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machine-assembled data set, I recorded the head judge, litigants, lawyers, and year of each case using NLP search and matching functions. This initial data set allowed me to identify and subset the 450 cases involving a government entity. After identifying the cases in this subset, I hand-coded additional features such as which party won the case and paid for the court costs. I also recorded the date of the trial court's decision, what administrative agency participated as a litigant, and the citizenship of the non-governmental litigant. Litigants are categorized as foreigner or a multinational litigant based on whether their name appeared on lists of Muslim, Jewish, Armenian, and Coptic names prevalent in Egypt at the time

<sup>2</sup>INCLUDE THE GIST OF THIS: These accusations of bias prompt a debate within the academic literature as to the extent to which the Egyptian elite initiated the reforms and favorably shaped the courts to fit their own interests. Seeing the rise of the Mixed Courts from a defensive developmentalism perspective, Nathan Brown argues, “legal reform was very much the turf of the centralizing elite that sought to circumscribe foreign influence even when collaborating with it” [Brown, 2018]. Others perceive the courts as a tool for European governments to further control the economic outcomes of the Egyptian state [Wood, 2016]. While acknowledging the inherent power imbalances within the system, my project will not focus on the motivations of various actors for establishing the court system. Instead, this analysis concentrates on the resulting effect of the system's actors regardless of their intentions.

## 2 Theories on the Mechanisms of Colonial Court Systems

Political science research has long been divided over the purpose and task of courts, especially under colonial regimes. Seen as institutions enforcing colonial oppression or precursors to post-colonial democratic development, Western-based legal systems often play critical, and overlooked, roles in establishing the colonial order. This literature review attempts to identify the major theories of how civil law courts operate in a colonial context. I begin my discussion with a broad exploration of what courts are and how their organization impacts governance functions. In particular, judges' role as lawmakers and the relative power of appellate courts greatly impact the system's governance outcomes.

### 2.1 What are courts?

Fundamentally, courts are a triad consisting of two disputants and an authoritative third party decision maker who often attempts to negotiate or mediate the dispute. Under the triad, the mediator assumes mutual consent on the part of the disputants while the parties assume the mediator's impartiality. In a perfect world, the appearance of fair jurisprudence necessitates the mediator be completely independent from both parties. Yet, operating a court within a governmental framework fundamentally contradicts the concepts of true consent and neutrality. As a result, the concepts of law and judicial office replace these elemental building blocks. Instead of mutual consent the court relies on both parties accepting the legitimacy of the law and assuming that the legal rule does not necessarily benefit their opponent. Likewise, both parties must be persuaded that the judges and laws constitute a neutral third party.

Replacing the triad's basic tenets with judicial office and codified laws threatens the mediation's basic logic. Since the judge and the law depend on the government, they are biased actors. As a result, these institutions' inherent biases jeopardize the court's dispute resolution function. It follows that when litigants do not influence the selection of judges or the creation of laws they will try their best to avoid official court [Shapiro, 1986]. This highlights a critical caveat in this paper's analysis: the number of unrecorded disputes is unknown. The untold number of cases not recorded contributes to the inherent selection bias in the data set of cases analyzed in this paper.

When litigants do choose to participate in litigation, they encounter complex, and often, biased judicial institutions. These institutions often reflect characteristics of the societies and interests which created them [Jacob, 1996].

### 2.2 Courts' relationship with governance

Since the law and judicial office replace mutual consent and impartiality in a governed context, the role of bureaucratic administrators and judges align closely and occasionally overlap. The courts and the bureaucracy act as "front-line social controllers" [Shapiro, 1986, 24] for the central governing authority because these institutions confront and solve societal problems at the individual level. Due to their role in enforcing societal order, courts are prime bureaucratic territory. Central governments often saddle courts with additional political functions to decrease the costs of governing. By granting judicial institutions the power to set policy and monitor its implementation by other bureaucratic actors, the central administration forces the court to take an active role in governance.



Courts shape the law through their fact-finding capacities<sup>3</sup> and ultimate discretion in interpreting legal statutes<sup>4</sup> [Shapiro, 1986]. Moreover, the appeals court in a civil system plays an out-sized role because of the increased judicial review through 'trial de novo' and the civil court's predisposition towards the government's interests. The 'trial de novo' feature of the civil law system centralizes the court system's power in the higher courts because the upper courts accumulate a case's facts as well as adjudicating on its merits. Furthermore, since civil law systems centralize power, they often more accurately reflect the government's interests as codified in the law [Shapiro, 1986]. Countering the power-centralizing practice of 'trial de novo', appellate courts adjudicate cases with a systematic prejudice against the government. Critical to my later analysis, Shapiro notes that while the decision to appeal a case is partially random, the case is likely to be “loaded toward administrative failure” [Shapiro, 1986, 50]. I will have to take this fact into account as I progress through my analysis.

## 2.3 Application to the colonial context

At their most basic purpose, courts are instruments of dominant societal interests [Galanter, 1974]. In protectorate Egypt, the British colonial power is wholly representative of that powerful authority. As a result, understanding the relationship between the Mixed Courts and the British colonial administration is critical. This section outlines two conceptual approaches, the liberal window-dressing and administrative “fire-alarm” theses, to interpreting the role of courts’ within authoritarian regimes.

## 2.4 Liberal window-dressing for an autocratic colonial state

The first approach proposes that the Mixed Courts served as liberal window-dressing for an otherwise repressive and autocratic colonial regime. Despite its posturing and rhetoric in support of the rule of law, the British Empire imperfectly implemented liberal rule of law governance mechanisms throughout its colonies. Although London might proclaim the benefits of a liberal rule of law order, in reality the economic and political influence of the minority European population subverted the unconditional application of the rule of law throughout the empire [Dorsett and Hunter, 2010]. The liberal window-dressing theory suggests that courts in British colonies functioned as superficial rule of law institutions to conceal the autocratic nature of the colonial government. Liberal-window dressing courts mask the autocratic aspects of the colonial government by performing the essential tasks of regime consolidation and social control under the guise of a liberal legal order.

Since judicial institutions foster a sense of political legitimacy, courts provide essential regime consolidation functions. The establishment of a court or other dispute resolution system in a newly-captured territory symbolizes the new ruler's strength and ability to implement the policies they desire. From the new ruler's perspective, the courts represent the institutionalization of their control. Thus in instances of colonization, the court transforms into an inherently political institution and is “deeply embedded in the general political machinery” [Shapiro, 1986, 37] of the

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<sup>3</sup>All civil law court proceedings, including appellate trials, are essentially fact-finding missions. Each time a civil case is decided, the judge or panel of judges compiles a series of facts from the plaintiff and defendant for the judgement to take into account.

<sup>4</sup>Courts must act as lawmakers when the black-letter of the law is unclear or its standard undefined. The somewhat organic process of developing legal norms grants judges the freedom to interpret and adjust the law. By shaping the law's implementation and outcomes, the courts actively participate in a key part of the law-making process.

new regime. From the indigenous people's perspective, courts or other triadic dispute mechanisms are necessary to the functioning of daily life. The conquered population has no choice but to interact with the regime's politically-charged judicial institution over the course their of daily lives, and in the process inherently legitimizing the colonial regime. As a result, rulers use courts as instruments to institutionalize and legitimize their rule. The establishment of a court system further legitimizes a new ruler's control because it implies that they intend to control the territory for the foreseeable future.

Courts also support regime consolidation by recruiting local supporters of the colonial regime to bolster the colonial order. As an institution which implements colonial order, courts have significant power to dole out preferential treatment to those who advance the goals of the new regime. In practice, this meant that the colonial government enacted, and its courts implemented, policies which favored certain segments of the indigenous population. While it varied from colony to colony, these policies generally favored ethnic or economic minorities [Dorsett and Hunter, 2010]. In exchange for preferential treatment, these groups were expected to support the colonial regime. Often colonizers seek to gain the buy-in of local notables to the court system, then delegate responsibility in exchange for their support [Shapiro, 1986]. In the Egyptian context, this is best exemplified by the Khedive's continuance as head of state, albeit with significantly diminished powers, throughout the British protectorate [Daly, 1998]. By facilitating preferential relationships with certain segments of the indigenous society, colonial courts consolidate the regime's control.

In addition to legitimizing the colonial order, courts perform a critical social control function within a colony. When a judge applies a pre-existing law or statute to settle a dispute the law becomes an element of social control. By applying the law, a judge imports a third set of interests embodied by the statute to be adjudicated along with interests of the two parties [Shapiro, 1986]. Given that the laws were often written by and predisposed to support the colonizers, the application of the law is a direct form of social control against the indigenous population. Furthermore, in French 'public law', which the Mixed Codes are based off of, judges are instructed to favor the interests of the state over those of the individual when they conflict [Shapiro, 1986]. The combination of the law's social control mechanisms and the Mixed Court's preference for the state's interests perfectly prepares the system to act as an institution of social control.

Although liberal window-dressing courts participate in maintaining the colonial order, they play second-fiddle to their bureaucratic counterparts. Colonial administrations need courts to implement their policy vision. Yet, liberal window-dressing courts have less latitude to set or shape policy because of a strong centralized bureaucracy. This results in a top-down effort to use courts to force citizen compliance with the law as a means to achieve policy goals. This separation and delegation of governance powers mirrors the police-patrol mode of Congressional oversight outlined by Mathew McCubbins and Thomas Schwartz. The centralized bureaucracy disincentivizes legal violations through "centralized, active, and direct" [McCubbins and Schwartz, 1984] police-patrol oversight. Similarly, a centrally mandated and supervised judicial institution adjudicates disputes in order to punish those who violate the law. The punishment for law-breakers intends to deter others who might consider contradicting the interests of the colonial government. In other words, the colonial bureaucracy uses liberal-window dressing courts as a mechanism to enforce certain outcomes upon its citizens under the guise of liberal rule of law. Furthermore, the lack of institutional oversight on lower-level bureaucratic actors creates additional governance headaches for the central administration. In practice, this yields a judiciary which superficially holds the government accountable. The lack of accountability violates a key principal of the rule of law. Thus, courts

which operate in this manner act as a cosmetic window-dressing for authoritarian regimes.

The liberal window-dressing theory argues that the courts served as regime consolidation and societal control mechanisms for the colonial government. In the case of the British protectorate over Egypt, the courts undertook these tasks while hiding behind the appearance of a liberal rule of law order. Thus, the liberal-window dressing theory sees courts as institutions which solely implement colonial will but cloak their intentions in rule of law rhetoric.

## 2.5 “Fire-alarms” for the colonial administration

While acknowledging the authoritarian nature of colonial governance in protectorate Egypt, the administrative “fire-alarm” theory proposes that the Mixed Courts performed multiple governance tasks while serving as critical sites of state-society contention. Fundamentally, this perspective believes courts have an independent influence on authoritarian political life. Instead of sidelining or weakening judicial institutions, authoritarians use “fire-alarm” style court systems to monitor lower-level bureaucratic actors. In the process, the courts are able to distance themselves from the political pressures of the authoritarian regime and somewhat implement the liberal rule of law. This section discusses the roles of courts in authoritarian regimes, how authoritarian regimes contain courts, and the impact of time-horizons on authoritarian oversight on judicial activity. The insights in this section are drawn from the literature of courts, elections under authoritarian regimes, and the McCubbins-Schwartz “fire-alarm” model of bureaucratic oversight.

Courts play four critical functions within an authoritarian state: they (1) act as institutions of social control, (2) provide political legitimization for the regime, (3) maintain elite cohesion and control administrative agents, and (4) develop and enforce unpopular policies.

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As outlined in the previous section, courts are institutions of social control and political legitimization [Shapiro, 1986]. Following common logic, authoritarian contexts amplify the judiciary's role in the regime's day-to-day societal and political control mechanisms, where courts often serve as the “linchpin of regime control over the popular will” [Ginsburg and Moustafa, 2008, 4]. Legitimization is also a critical component of the regime maintaining power. The judiciary provides the veneer of legal legitimization and bolsters the regime's image among certain constituencies [Moustafa, 2014]. In colonial contexts, the buy-in from local elites is especially crucial for the colony's long-term success and cost-effectiveness [Daly, 1998]. Unlike the liberal window-dressing thesis, however, the administrative “fire-alarm” thesis holds that in order to sell the courts' legitimizing mission, however, judicial institutions must enjoy some degree of real autonomy from the will of the regime [Thompson, 1975]. This small level of necessary freedom transforms the judiciary under an authoritarian regime into a space for citizen-state contestation.

In addition to the social control and political legitimization functions provided by administrative “fire-alarm” courts, these institutions support elite cohesion and centralized administrators'

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<sup>5</sup>The administrative “fire-alarm” theory also notes that authoritarian governments use courts as scapegoats to implementing unpopular policy proposals. Since courts are often seen as nonpolitical forums, judicial decisions implementing controversial policies minimize the political fallout of the unpopular policy for the government. Authoritarian leaders steer sensitive political questions to, in reality, political judicial institutions in order to achieve policy goals without accruing the public's ire [Ginsburg and Moustafa, 2008].

efforts to overcome the principle-agent problem. Moustafa and Ginsburg note that under authoritarian regimes “judicial institutions are used to formalize ad hoc power sharing arrangements amongst regime elite” [Ginsburg and Moustafa, 2008, 8]. By formalizing the regime’s agreement between elites, judicial institutions can resolve disputes while minimizing the fragmentation of the ruling apparatus. Since elite division is often a precursor to the removal of the autocratic regime [Dix, 1982], reducing fragmentation within the ruling elite ensures the regime will retain power for a longer period of time.

Similar to policies attempts to prevent elite splintering through regime institutionalization, an administrative “fire-alarm” court endeavors to identify issues with lower level bureaucrats. Under the administrative “fire-alarm” approach central administration require its courts and citizens to hold violators of the law accountable. In comparison to the liberal window-dressing approach, administrators of “fire-alarm” court systems do not solely expect the courts, and by extension the government, to hold violators of the law accountable. The administrative “fire-alarm”’s ground-up oversight model empowers citizens to identify bureaucrats who violate the law or policy preference of the central administration. As a result, the central administration gains an independent check on the implementation of their policy objectives by lower level bureaucratic actors. Like the liberal window-dressing model, the administrative “fire-alarm” thesis is indebted to the McCubbins and Schwartz model of fire-alarm Congressional oversight. The authors theorize that Congress efficiently monitors the executive branch by enabling individuals or organized interest groups notify Congress when the executive branch’s decision-makers are not keeping policy promises [McCubbins and Schwartz, 1984]. In a colonial administrative setting under this oversight mode, subjects file suits against the government in order to note their displeasure with the spirit or enforcement of the law. These criticisms are useful information to gather on the performance of the authoritarian’s bureaucracy [Rosberg, 1995].

As mentioned above, the administrative “fire-alarm” court system empowers citizens to ensure the lower level bureaucratic actors follow the policy outlined by the central colonial government. This mode of information delivery improves the quality of feedback on the efficacy of the lower level decision-makers because it cannot be corrupted in through pure corruption, distortion of information, or suppression of criticism commonplace in authoritarian states [Rosberg, 1995]. As a result, in authoritarian regimes, “fire-alarm” courts can provide a useful forum by which the central government gains unfiltered information on the behavior of its administrative subordinates, addressing the principal-agent problem plaguing many autocracies [Ginsburg and Moustafa, 2008]. As a result, authoritarian regimes benefit from a functional judiciary in order to promote elite cohesion and monitor its bureaucratic subordinates.

While authoritarian regimes benefit the elite cohesion and monitoring lower level bureaucratic actors, authoritarian rulers must also properly contain courts in order to maintain their grip on power. Authoritarian regimes who wish to benefit from a court system face somewhat of a Goldilocks problem. Courts in authoritarian contexts must at least have some level of superficial independence to legitimize the government [Thompson, 1975]. If the courts become too independent, however, that could call into question the validity of an authoritarian government. As a result, regimes must “constrain judicial activism without infringing on judicial autonomy” [Ginsburg and Moustafa, 2008, 14]. Authoritarian governments reduce judicial activism by incentivizing judicial self-restraint, splintering the judiciary system, constraining access to justice, and incapacitating judicial support

networks.<sup>6</sup>

The strength and number of constraints on the judiciary under authoritarian regimes reflect how long the regime imagines it will stay in power. The authoritarian government's envisioned time-horizon has significant implications for its relationship to the judiciary. While short-lived regimes may not see the need to establish an autonomous judiciary, entrenched authoritarian regimes are likely to empower the judiciary in order to extend the life of the regime and guard against the loss of power [Moustafa, 2014]. The literature on authoritarian elections observes a similar phenomenon: the decision to institutionalize elections is critical to the longevity of the autocracy [Gandhi and Lust-Okar, 2009]. By establishing a relatively superficial check on executive power, authoritarians increase their chances of surviving periods of displeasure or unrest. This lesson can easily be applied to the authoritarian court context. Authoritarians who establish administrative “fire-alarm” systems manage complaints against the government's policies without addressing the structural issue of authoritarian rule. As a result, an authoritarian's decision to institutionalize law-implementing powers through an administrative “fire-alarm” judicial system signals their desire to remain in power for the foreseeable future.

In sum, “fire-alarm” courts provide functions for authoritarian governments other than of societal control and regime consolidation. Since courts are both useful and dangerous to the regime, autocratic regimes control judicial activism without destroying the court's autonomy by incentivizing judicial restraint. The presence of somewhat autonomous courts within an authoritarian state provides avenues for activists to challenge regime policy through its own institutions. In fact, “the more a regime relies on rule-of-law rhetoric, the greater the opportunity for litigants and judges to expose the shortcomings of the government” [Ginsburg and Moustafa, 2008, 7], reflecting the core tension between judicial empowerment and control.

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<sup>6</sup> Incentivizing judicial self-restraint is a basic step to ensure judges adjudicate independently without overly criticizing the regime. Assuming courts only serve the interests of the state obscures the strategic choices made by judges in authoritarian contexts [Moustafa, 2014]. Under an authoritarian regime, a typical mode of court activism is to subtly apply pressure for political reform at the margins of political life and resist impinging on the core interests of the regime. The anticipated threat of executive reprisal and the simple futility of court rulings on the most sensitive political issues are usually sufficient to produce judicial compliance with the regime's core interests [Ginsburg and Moustafa, 2008]. The internal structure of appointments and promotions can also constrain judicial activism independent of regime interference. While core interests vary across regimes, all authoritarian governments seek to safeguard the core legal mechanisms that support their ability to sideline political opponents and retain power. Core regime interests are typically challenged only when it appears the regime is on its way out of power [Moustafa, 2014]. Fragmenting the judicial bureaucracy is an additional strategy pursued by authoritarian regimes who wish to retain the facade of judicial overview. Authoritarian rulers armed with auxiliary institutions can extend substantial degrees of autonomy to the regular judiciary because they can direct politically-sensitive disputes to specialized courts which are friendlier to regime interests [Ginsburg and Moustafa, 2008]. At a basic level, authoritarian regimes can constrain access to justice in order to control the level of judicial activism within an semi-autonomous judiciary. Regimes can engineer constraints on the institutional structure of judicial review, the type of judicial review permitted, and the legal standing requirements. Judicial review is restricted further in civil law courts where judges have less maneuverability and less capacity to create law than in the common-law system [Merry, 1988]. Lastly, regimes contain court activism by weakening judicial support networks. Weak judicial support networks are a result of constraints placed on the judiciary by the executive and characteristically feeble civil society in authoritarian states. Without strong judicial support networks, judges are less likely to clash with the government [Ginsburg and Moustafa, 2008].

## 2.6 Courts as a reflection of regime interests

The liberal window-dressing and administrative “fire-alarm” models of colonial courts are useful templates to conceptualize the role of the Mixed Courts in British colonial governance. Yet, the individual models cannot account for the complicated hierarchy of regime interests at play in colonial Egypt.

In the end, no court system consistently acts like one model or the other. The current policy preferences of the regime dictate the manner in which the courts operate. Several factors, including time, cost, and geopolitical currents, determine the colonial administration's policy preferences. Based on those interests, the administration creates new institutions or moulds existing institutions to serve those policy preferences. The British colonial administration's relationship with the Mixed Courts was no different.

Comparing Egyptian and Algerian colonial courts systems illustrates the impact of colonial policy preferences on the development of judicial institutions. The judicial system in France's Algerian colony shares an Ottoman legacy of consular court systems and a colonial court highly influenced by the Napoleonic Code [Christelow, 1985]. Instead of acting as administrative “fire-alarm” oversight, however, the Algerian courts resembled centralized liberal window-dressing. Given that the key difference between the two cases is the colonizer, this comparison suggests British policy toward Egypt played a critical role in shaping the Mixed Courts into an administrative “fire-alarm” system. The overstretched British government could not spend as much money administering its colonies as the French. As a result, the British relied on an indirect, and cheap, form of colonial rule ([Booth and Gorman, 2014] and [Tignor, 2015]), while the French implemented a centralized and costly direct rule over its colonies [Christelow, 1985].

While the comparison between Egypt and Algeria emphasizes the impact of colonial policy preferences on the character of colonial judicial institutions, the narrative is more complex. A regime may have multiple competing interests at one time. The government's resulting hierarchy of regime interests complexly shapes the court. This complexity necessitates removing the binary between the liberal window-dressing and administrative “fire-alarm” theories. Creating a theoretical space between the two allows for an understanding that the Mixed Courts served multiple, and possibly conflicting, interests simultaneously. As a result, the relationship between the Mixed Courts and the British colonial government must be interpreted as a reflection of the policies the colonial government was prioritizing at the time.

## 3 Context

This section includes a discussion of the events leading up to the creation of the Mixed Courts, the history of the Mixed Courts, and the political milieu the courts existed in following their establishment. The section incorporates descriptive data analysis from the new data set in order to augment the literature's historical understanding.

### 3.1 The history of the Mixed Courts

In 1867, Egypt's Prime Minister Nubar Pasha proposed initiating negotiations between Egypt and the capitulatory foreign powers to reform the capitulatory legal system <sup>7</sup>. Ten years after Nubar Pasha's initial proposal [Hoyle, 1986b], the Egyptian and foreign governments finalized negotiations on the treaty which established the Mixed Courts. The treaty created a new court system based on the Napoleonic Code to adjudicate cases between Egyptian and foreign litigants. This section gives basic background on the court's organization and common practice as well as matching understandings from the historical literature with this project's data collection.

Founded in 1876, Egypt's Mixed Courts were designed to define jurisdictional boundaries between consular courts, government tribunals, and religious courts. Established by an international commission, the court system had to be revived every 5 years until it was renewed indefinitely in 1921, only to be dismantled in 1949 [Wilner, 1975]. Figure 1 shows the growth of Court of Appeal's total case load from its early years to 1906, the end date of this paper's data set. The cases litigated by the Egyptian government and its administrations also grows over the time period.

The increase in the volume of cases over time follows European and American primary sources, chief among them Judge Jasper Yeates Brinton [Brinton, 1950]. The number of cases involving the Egyptian government and various administrations similarly increases over time. The three-year gap between 1890 and 1893 present on all three figures represents a lack of available records from the Court of Appeals for those years. While 1890, 1891, and 1892 were not particularly volatile years in Egyptian history, this will be a blind spot in the analysis moving forward. Despite this discontinuity, it is clear that the Court of Appeals case load, and by extension the Mixed Court system's popularity and power, increased over the between 1878 and 1906. In comparison to the court's increasing caseload, the cost of administration remains relatively flat. The following data in Figure 3 comes from *Mixed Courts of Egypt* by Mark Hoyle. The data show that while the court's expenditures remain more or less constant from the late 1870s to the early 1910s, the system's

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<sup>7</sup> As an autonomous tributary state of the Ottoman Empire, pre-colonial Egypt retained many of the Ottoman-era legal structures and agreements with European states. Understanding the Ottoman system of capitulations prior to Britain's veiled protectorate is critical to comprehending why the Mixed Court system arose in the first place. Starting in the early 1500s, the Ottoman Empire began granting certain European nations and city-states "most favored nation" trading status in an effort to both stimulate trade throughout the empire [Kuran, 2003] and bolster the Ottomans declining military strength [Karaman and Pamuk, 2010]. After the Ottoman conquest of Egypt in 1517, the capitulations legally applied to the territory which we now know as Egypt [Owen, 1993]. The Ottoman capitulations remained in effect after Muhammad Ali declared Egypt to be a semi-independent region of the empire in 1805. As the Ottoman Empire grew increasingly weak compared to its European neighbors, European states forced Istanbul to grant progressively sovereignty-costing concessions. One of these concessions consisted of allowing European governments to establish and operate consular courts which superseded Ottoman jurisdiction in cases where citizens of those nations are involved [Kuran, 2003]. In effect, these capitulations created parallel justice systems only available to European nationals throughout the Ottoman empire. By the late 1850s, fourteen consular courts existed within Khedival Egypt's borders. These courts catered to Western capitulatory powers including: Great Britain, France, Italy, Russia, the United States, and nine other capitulatory powers. These courts adjudicated any dispute involving a national of a European state which participated in the consular court system [Wilner, 1975]. For example, the Italian consular court oversaw litigation between Italian and non-Italian litigants, as did the British for British citizens, the French for French citizens, and et cetera. The various consular courts enabled favorable litigation for European nationals within the confines of the Ottoman Empire and ceded indigenous jurisdiction over to foreign governments [Hoyle, 1985]. By 1907, 11.5 percent (75,000) of Cairo's population and 17.6 percent (65,000) of Alexandria's population were foreign-born and therefore retained foreign citizenship, enabling them to litigate disputes with the Egyptian colonial government through the Mixed Courts. The proliferation of the consular court system over the Khedival period resulted in uneven legal enforcement and convinced both Egyptian reformers and European diplomats to negotiate a new legal order

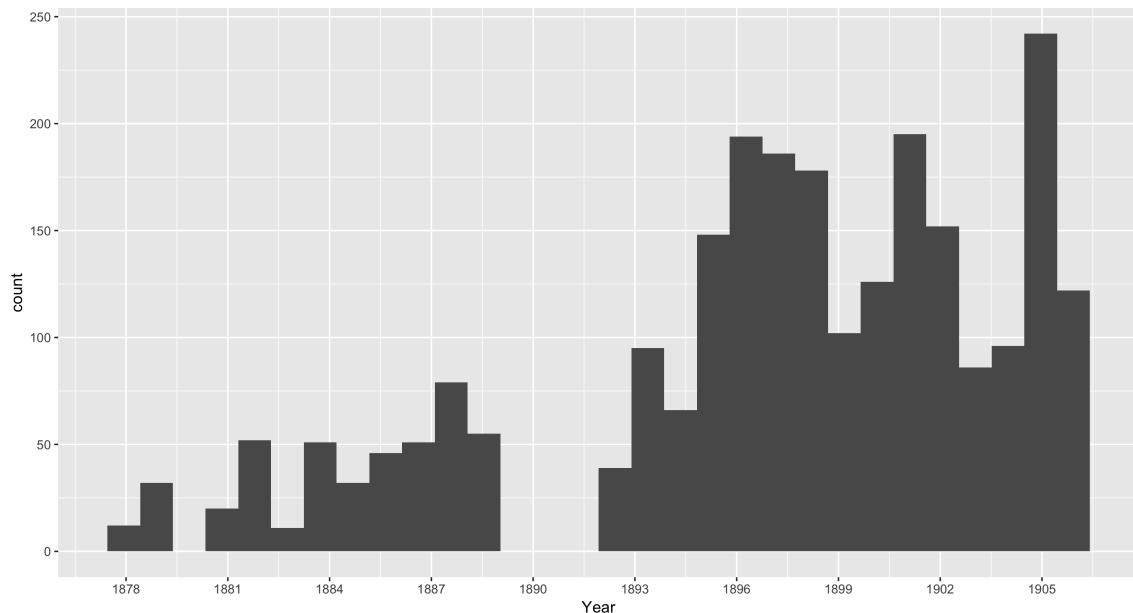


Figure 1: Total number of cases

overall income drastically increases. The curve of income and expenditure diverges after 1890, as the court system's income continues to increase. A combination of the system's increasing case load and the British colonial administration's revenue-maximizing while cost-minimizing colonial model likely explains these disparate trends.

To deal with the system's case load, the court's charter established three trial courts in Cairo, Mansourah, and Alexandria, as well as the Court of Appeals located in Alexandria. In its later iterations, the Mixed Courts also established district courts in Upper Egypt [Brinton, 1950]. As the seat of international commerce in Khedival Egypt, Alexandria served as the perfect place for the Court of Appeals. It did not hurt that the city was substantially far enough from Cairo, and therefore somewhat out of the reach of foreign and domestic political influences [Hoyle, 1985]. Yet, a litigant's distance from Alexandria presents inherent selection bias that the analysis cannot overcome. Presumably some litigants had to forgo the ability to appeal or automatically lost their case because they were unable to travel to the Court of Appeals in Alexandria. As expected this issue decreased with proliferation of railroads and other transportation technology through Egypt during this period [Daly, 1998]. Figure 4 illustrates the decrease in the yearly average of the number of days between the lower and higher courts' decisions for cases involving a government entity. As a result, the decrease in the time between court decisions is likely explained by a combination of transportation and bureaucratic improvements. The decrease in time between decisions can also be seen as a result of the increasing proportion of cases involving the Interior Ministry toward the end of the time period covered by the data set. As this paper will later argue, the colonial government fast-tracked cases involving the Interior Ministry.

In addition to the usage of French civil law by the Mixed Court's judiciary, the ineffective de



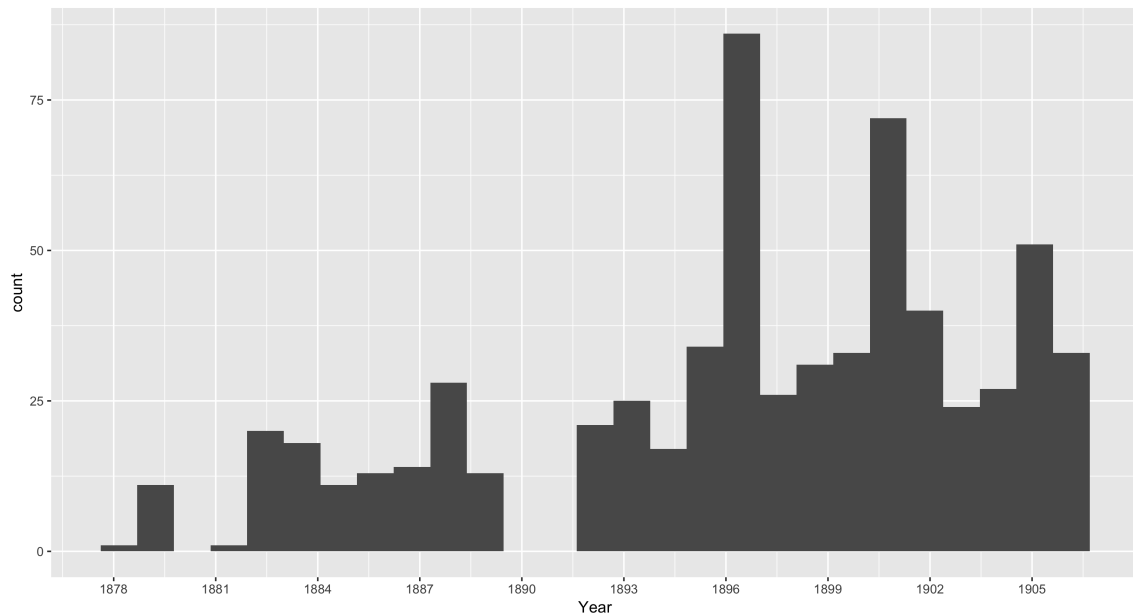


Figure 2: Total number of cases involving the colonial administration

jure check on executive power and the theory of mixed interest suggest that the courts were heavily weighted in favor of the interests of the capitulatory powers. The uneven playing field on which the Egyptian government negotiated about the Mixed Courts indicates the courts were established to protect foreign interests. In fact, Wiley and Hoyle argue that the courts generally enforced the codes except when they interfered with capitulatory rights. In light of the financial issues created by the Khedive, the mixed codes contained one critical concession to the capitulatory powers: the code required the government to enforce judgments against itself [Brown, 1993]. This policy choice by the capitulatory powers, however unenforced by the Khedive's administration, illustrates the importance of Egypt's debt crisis as a consideration during the establishment of the Mixed Courts. It also represents the first de jure check on executive power in the history of Egyptian governance, even if the principal was rarely enforced.

## 3.2 The political milieu following the creation of the Mixed Courts

### 3.2.1 Key turning points in British administration of the courts

In the protectorate's early days, the British divided up control of the Egyptian government into agencies controlled by the British and those controlled by Egyptians. The public works and agriculture administrations are examples of British controlled agencies, while the waqf and interior ministry were left to the Egyptians [Booth and Gorman, 2014]. As time wore on, however, the British increased their bureaucratic supervision into other institutions they had previously agreed to leave under Egyptian supervision. In 1890, the British began placing European civil servants into the formerly Egyptian domains of the Ministries of Interior and Justice. Robert Tignor notes, the "impulse for the extension of authority seems to have stemmed primarily from the British

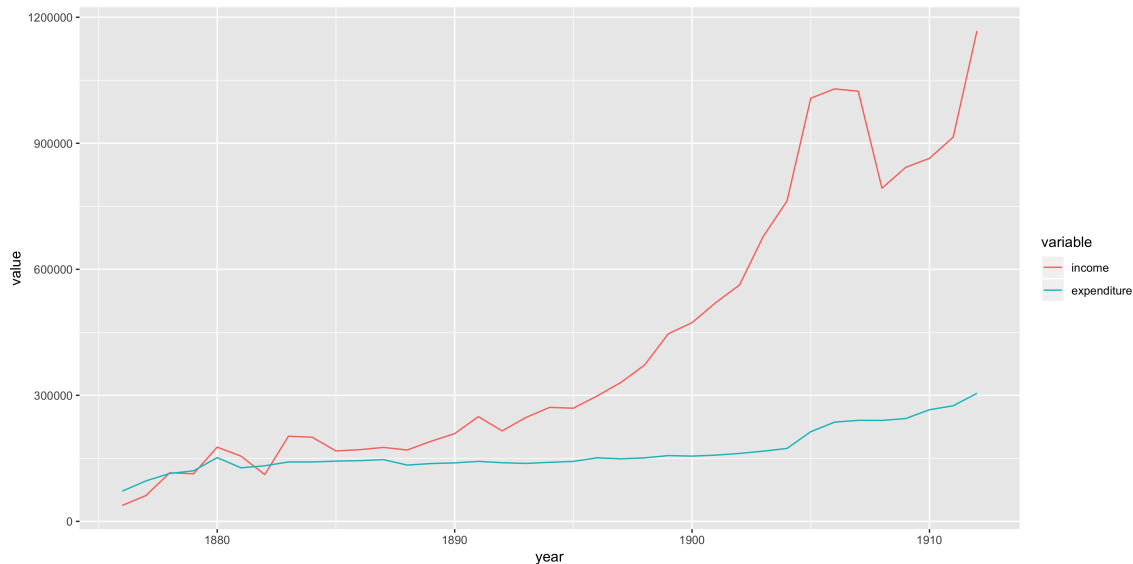


Figure 3: Trends in the Mixed Court's Income and Expenses (in Egyptian pounds)

bureaucracy in Egypt. Its members were anxious to secure administrative efficiency, to remove what they regarded as defects in the existing system” [Tignor, 2015, 160]. A 1906 report commissioned by the British Consul-General of Egypt, Lord Cromer, shows a doubling of European officials in the Egyptian Justice and Interior Ministries [Tignor, 2015].

Especially following the 1892-1894 political crisis, the British actively increased their presence and supervision of Egyptian bureaucracy. Following that period of instability, the British administration established the position of British Judicial Advisor in 1894. The position was intended to provide greater administrative oversight of the Ministries of Justice and Interior as well as the management of Egypt's multiple court systems. From the colonial perspective, the British sought to prevent the country's domestic insecurity from impeding Egypt's economic development [Tignor, 2015]. The Egyptian government did not appreciate the colonial government's encroachment on Egyptian policy. The appointment is widely seen as the most powerful blow to Egyptian autonomy prior to World War I and a major source of nationalist grievance [Harold H. Tollefson, 1990]. The presence of British administrators continued to draw ire until their total removal in 1952.

## 4 Analysis and Results

Using data from 450 cases between governmental and non-governmental entities litigating before the Mixed Court's Court of Appeals between 1882 and 1906, this section illustrates how the relationship between the colonial government and the Mixed Courts initially operated in a manner consistent with the administrative “fire-alarm” thesis. As British control over the Interior Ministry bureaucracy expanded, however, the nascent rule of law environment wilted under colonial political pressure. The data demonstrate that the administrative “fire-alarm” thesis correctly characterizes the government's overall success record: it does not win a hundred percent of its cases while the

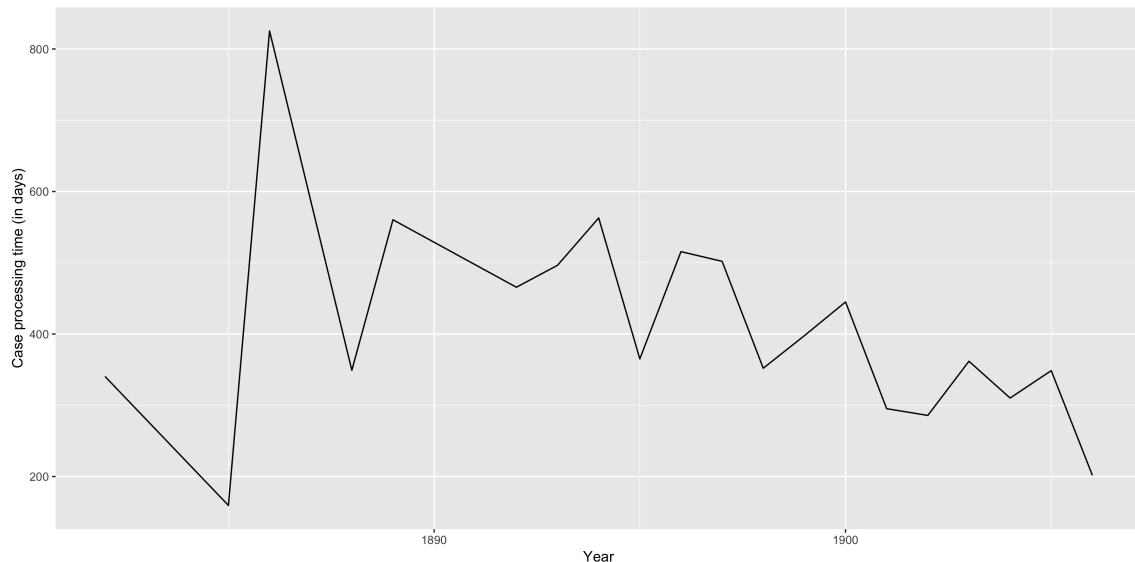


Figure 4: Average number of days between lower and higher court decisions by year

litigating government entity's rate of success varies over the independent variables of agency and time. The data cannot directly address the elite cohesion and judicial constraints aspects of the administrative “fire-alarm” thesis, and therefore they play a smaller role in this analysis.

#### 4.1 The lack of uniformity in the government's success

Although the Mixed Courts may have bolstered the colonial regime's interests through their interpretation of the law [Wilner, 1975]; they did not, however, uniformly accept the government entity's argument. In order to test the frequency at which the court accepted the government's argument, I examine at what rate the government entity participating in the case won the dispute at hand. This paper finds that the colonial government entity wins 59% of all of the cases it was party to in the data set.

There is no adequate baseline to frame this statistic for comparative analysis. Under a perfectly fair system the government entity wins exactly 50% of its cases. Yet even in states with strong rule of law traditions, the government is successful in a substantially greater portion of the cases. A recent analysis of the American president's success rate in the Supreme Court finds that when the president's administration litigates in the nation's highest court, it wins nearly two-thirds of the cases it presents [Epstein and Posner, 2017]. The American comparison is not a perfect fit because it fails to capture the Napoleonic and trial de novo features of the Mixed Courts. Under most Napoleonic Code systems judges are instructed to favor the interests of the state over those of the individual when they conflict. Furthermore, by reexamining and re-adjudicating all the facts relevant to the case, civil law court systems' trial de novo feature enables the court to more effectively articulate the government's interests [Shapiro, 1986]. Since both features which predispose the Mixed Courts to supporting the government's position are absent in the American

judicial system, the comparison, while interesting, does not mean much.

Similar government success rates in the trial courts continue to suggest that the entire Mixed Courts system did not uniformly support the government's position. The assignment of the plaintiff and defendant labels in the Court of Appeals serves as a proxy to determine which side triumphed in the lower level dispute. In the trial courts of the Mixed Court system the government has a 56% success rate. The similar success rates of the trial and appellate courts suggest neither success rate is an anomaly. Furthermore, the lack of discrepancy between the government's success rate in the trial and appellate courts indicates that the two venues operated in similar ways. In fact, less than four out of ten (39%) of the all lower court decisions were overturned. 54% of those cases were overturned in the government's favor and 46% of the lower court's decisions were rejected by the Court of Appeals. The close relationship between the trial and appeals courts' results indicate that while the courts may have favored the government's position, they were not uniformly or drastically so.

Due to a lack of a perfect comparative baseline, this paper holds that there is no ideal numeric cut-off to determine if the Mixed Courts functioned as liberal window dressing or an administrative "fire-alarm" system. Instead, the government's lack of complete dominance suggests the court's administrative "fire-alarm" role within colonial governance.

## 4.2 Examining the presence of variation across independent variables

Documenting and explaining variation in the government's success rate and processing time across head judge, time, citizenship, and agency adds more depth to our understanding of the government's relationship with the Mixed Courts. Observing variation in the government entity's success rate across different independent variables rules out the liberal window-dressing theory's notion that the government success rate is only dependent on the institutional alliance between the government and the courts. Instead, the presence of variation clarifies that the government's success rate is dependent on a more complex mix of external and institutional factors. Likewise, observing variation in the processing time, the number of days spent between the trial and appellate courts' decisions, further complicates our understanding of the government and the Mixed Court system's relationship. This paper finds that there is little significant variation in the government entity's success rate across time, head judge, or citizenship. Rather, significant differences in judicial outcomes exist across government agencies as well as the interaction between agency and citizenship.

When the government entity's success rate is broken down by year, head judge, or citizenship, there is little to no variation. Figures 5 and 6 display a lack of significant difference in the government entity's success rate across time and head judge. Given the lack of substantial variation in the government entities' success rate across different head judges, the Mixed Court's head judges are being swayed by institutional incentives, not personal policy preferences.

There is a similar lack of variation in the government entity's success rate against foreign or multinational litigants. Before discussing the variation across citizenship, however, it is important to review who has the right to litigate against a Egyptian government entity in the Mixed Courts. Due to the Mixed Court's expressed purpose to adjudicate between foreign and native litigants, each case must include at least one opposing pair of native and foreign litigants. Through the theory of mixed interest<sup>8</sup>, the court's jurisdiction extends to multinational parties. Since this data

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<sup>8</sup> Unlike a discretionary *de jure* check on the Khedive's power, the mixed interest understanding of the court's

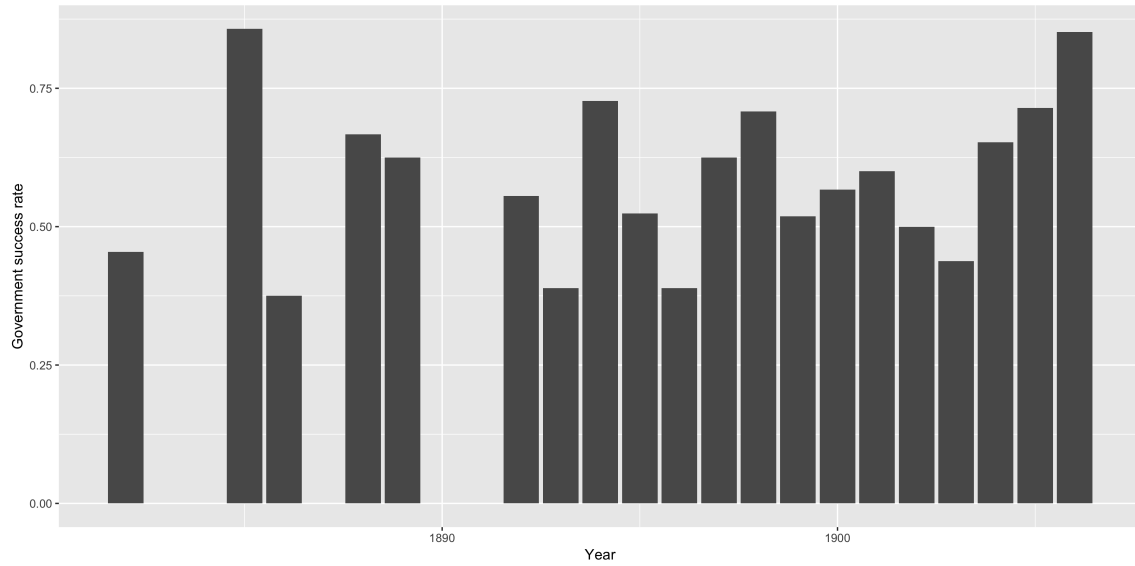


Figure 5: Variation in the government entity's success by year

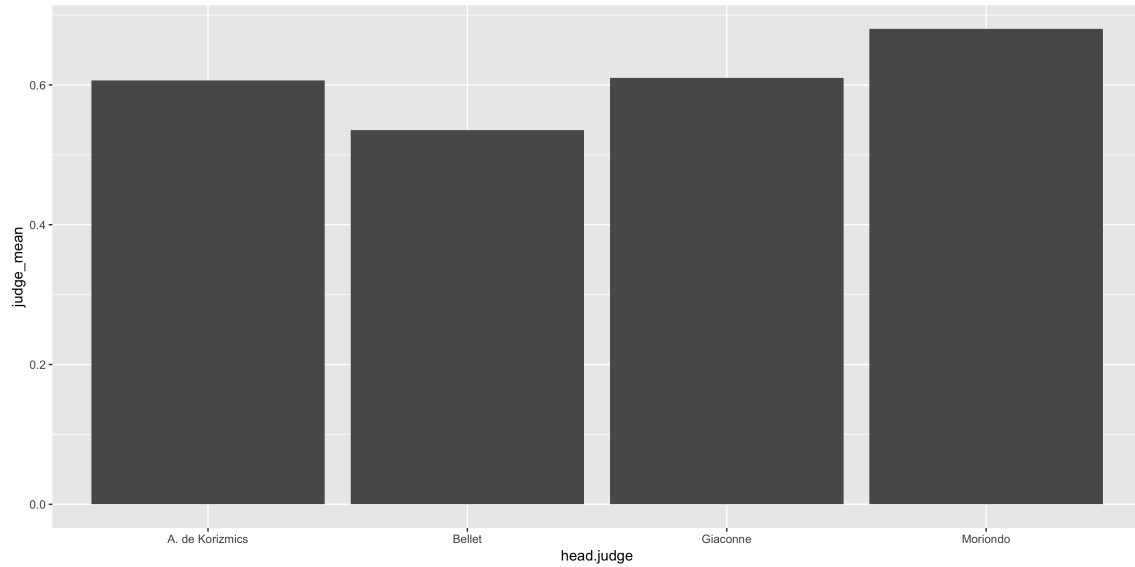


Figure 6: Variation in the government entity's success by head judge

jurisdictional authority increased its reach and power in Egypt's multi-jurisdictional system. The court's founding charter clearly defines the court's jurisdiction as resolving disputes between foreign and native litigants. Over time and through practice, however, the Mixed Courts adopted the theory of mixed interest. The theory of mixed interest held that if Egyptian-owned enterprise had foreign shareholders or an insignificant actor in the litigation a foreigner

set focuses on cases involving a native government entity, the opposing litigants must be foreign or multinational.

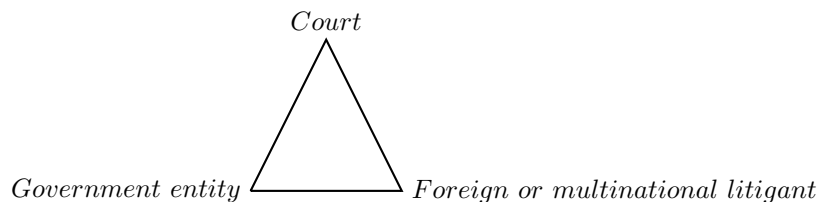


Figure 7: The triadic model of the Mixed Courts involving a government entity

In order to test for the presence of variation in the government's success rate across litigant citizenship, I ran a difference of means test comparing the overall success rate of foreign and multinational parties. The results suggest the difference in the average of the government's success rate between foreign and multinational parties is not statistically significant. Furthermore, there is also no statistically significant difference in the amount of time spent in the appeals process for foreign and multinational litigants, but the multinational litigants' cases present in the data set on average took longer to reach the higher court (See Figure 8). On its face, this suggests there is no difference in the judicial outcomes for multinational and foreign litigants. The fact that the Mixed Courts did not privilege foreign litigants, the constituents of the colonial powers, points to the court system acting in a rule of law manner [Shapiro, 1986]. This paper will add more nuance to this conclusion by examining the difference in the Interior Ministry's outcomes across citizenship in later sections.

#### 4.2.1 Variation across agency

Unlike year, head judge, or citizenship, the government entity's success rate and processing time varies across agency. There are noteworthy differences in the government's success rate when the data are broken down by agency. Assuming a p-value of 0.05, a chi-squared test suggests that varying proportions of success by a particular government agency are not all drawn from the same distribution. Furthermore, there is a statistically significant difference of means test between the success rate of government entities labeled the “Egyptian Government” and the “Interior Ministry”. Under colonial governance in Egypt from 1882 to 1906, cases involving the Interior Ministry included appeals for criminal offenses and the regulation of public establishments while the entity known as the Government of Egypt dealt with a broader variety of cases. The Interior Ministry's higher success rate suggests that the courts were more favorably inclined to upholding the government's opinion when criminal or public order matters were involved.

As a result, the identity of the government agency litigating the case had an effect on how many of the cases that government entity won. This is a particularly strong argument given that combined

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the case fell under the Mixed Court's jurisdiction [Wilner, 1975]. Under this theory, the court's jurisdiction expanded to include cases litigated between two Egyptian citizens which contained mixed interests. As a result, the theory of mixed interests greatly expanded the court's jurisdiction over disputes between Egyptian citizens. The theory also helped increase the court's power and significance within the Egyptian political landscape [Hoyle, 1986a]. Since the court pursued policies like the theory of mixed interests and the *de jure*, albeit ineffective, check on the Khedive's financial choices, scholars and the court's contemporaries accuse the court's of being a biased institution.

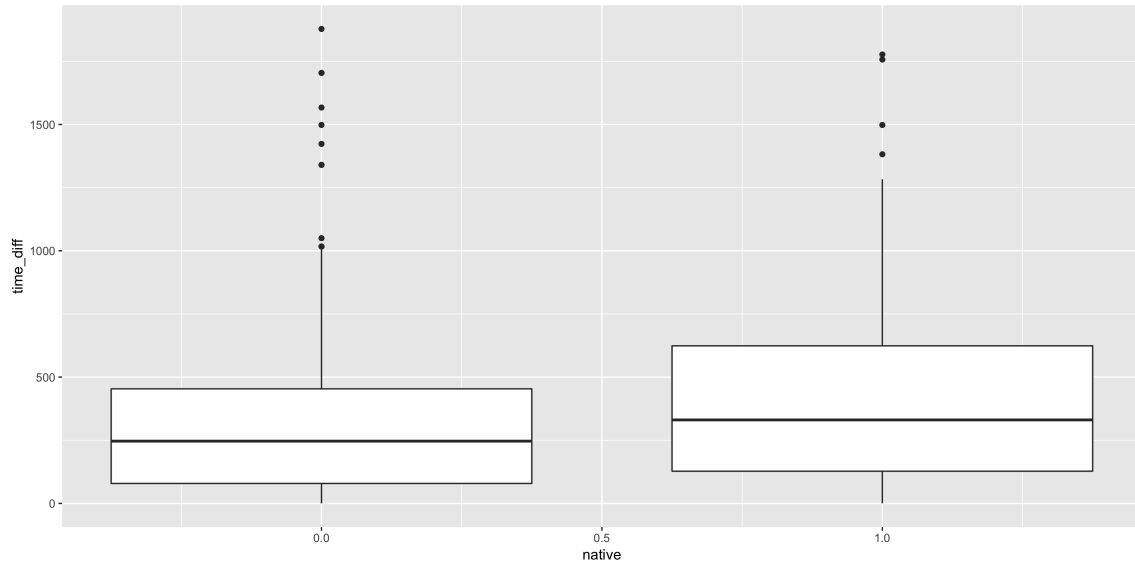


Figure 8: Number of days between when the lower and higher court heard the case, separated by the litigant's identity

the Egyptian Government and Interior Ministry litigated almost half of the cases within the data set. Differing agencies' varying degrees of success suggests that the relationship between the government and the Mixed Courts did not only rely on the government entity's participation in the colonial government and instead included other factors when assessing the relationship. Alternatively, the observed variation could stem from those agencies which were controlled directly by the protectorate government versus those initially left under Egyptian control. Since the government entity's success rate depends on the identity of the agency litigating the case, the Mixed Courts are more than illiberal window dressing, but instead are likely to be acting as fire alarms for the colonial state.

Variation across agency can also be observed with another dependent variable: the number of days between the date when the trial courts issued its verdict and the date when the Court of Appeals issued theirs. As Figure 11 reveals, the average wait time between verdicts is significantly lower for cases involving the Interior Ministry. The data show no other agency matches the speed in which the Mixed Courts processed cases involving the Interior Ministry. The variation across agency gives further credence that the relationship between the government and the Mixed Courts is not one-dimensional. In fact, the variation across agency suggests that the Mixed Courts dealt with cases involving the Interior Ministry very differently than other agencies.

While this may or may not have been a conscious act on behalf of the Mixed Courts' judiciary, the net effect is a substantially higher than average success rate for the Interior Ministry. Recalling that the cases which appeared before the appeals court are more likely to outline a convincing case against the government [Shapiro, 1986], the fact that the Interior Ministry has a significantly higher than average success rate than other agencies suggests an alignment of incentives for both institutions. On top of this, the average number of days between when the lower court and higher court heard a case is significantly lower for any case involving the Interior Ministry. This fits into

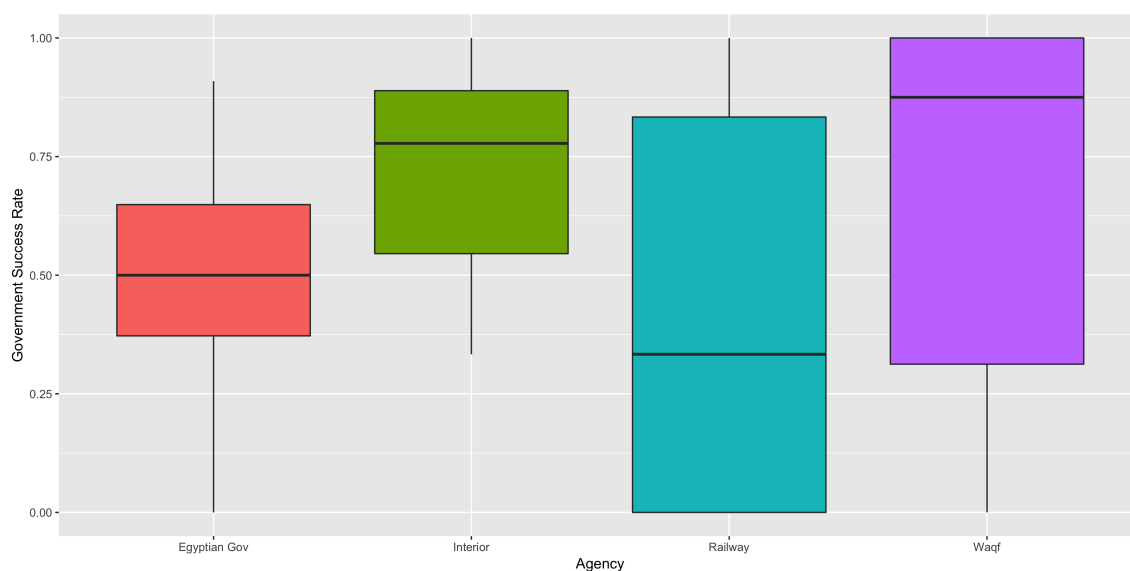


Figure 9: Variation of the government's success rate across agency

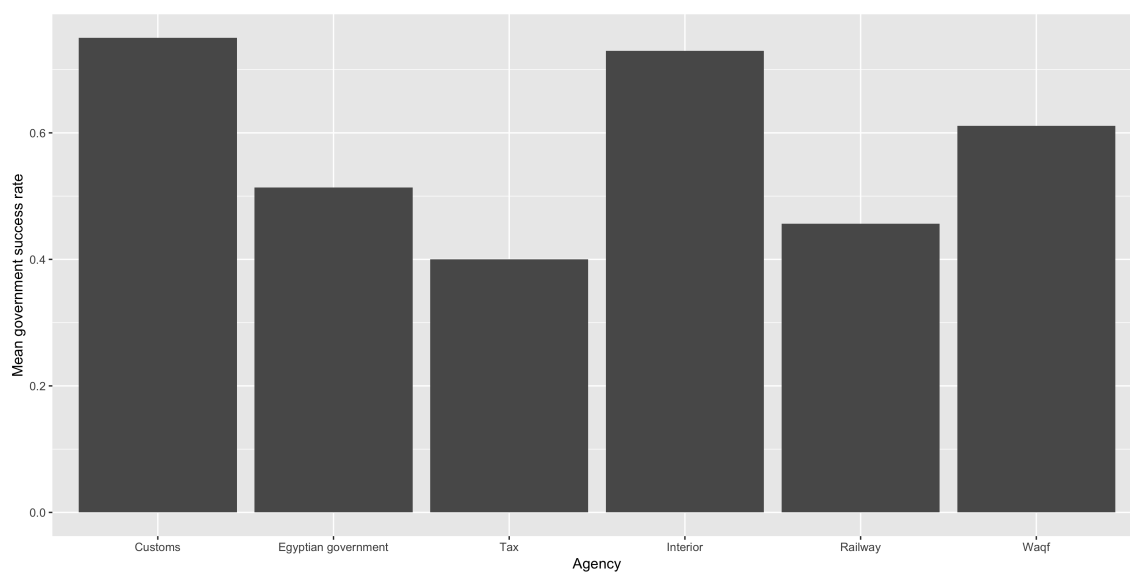


Figure 10: Government entity's success by agency

the theory that all governments, especially colonial governments, require courts to perform multiple functions, chief among them acting as “front-line social controllers” [Shapiro, 1986, 24] to decrease administrative cost. Unburdened by a lack of opposition on behalf of the Mixed Courts’ judges



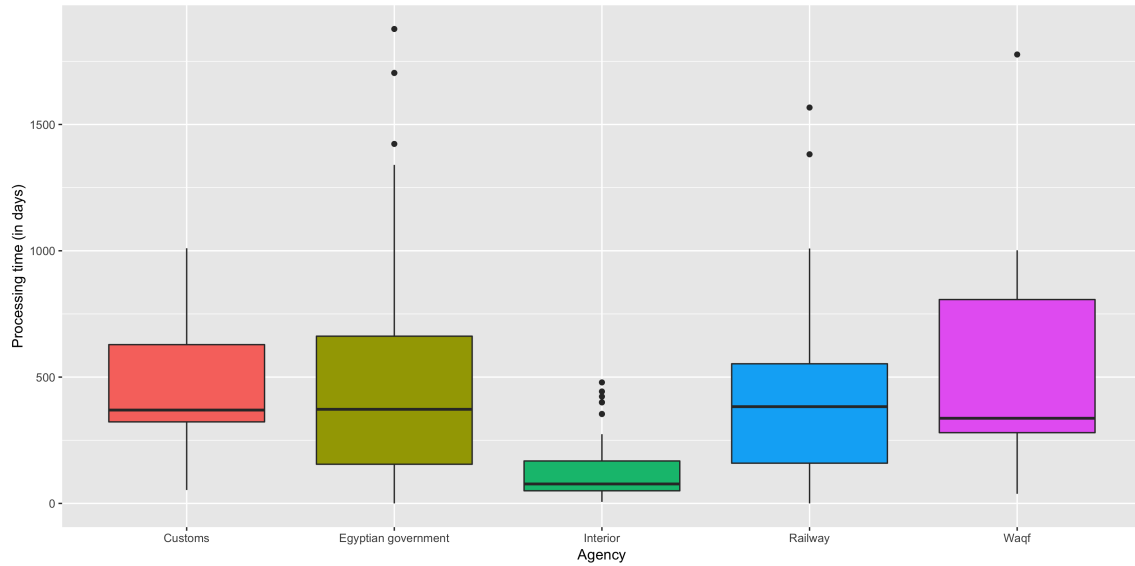


Figure 11: Number of days between when the lower and higher court heard the case, divided by agency

to cases pursued by the Interior Ministry, this institutional association likely reduced the Interior Ministry's financial burden to prosecute and win such cases.

Fundamentally, the variation across agency and citizenship when only examining cases involving the Interior Ministry points to the Mixed Court's flexibility. This flexibility allowed the courts to provide greater space for citizen-state contestation in certain types of cases and heavily favored the government entity in others. The presence of citizen-state contestation added to the court's legitimization of the colonial government while the high rate of agreement with the Interior Ministry points to the court's role in societal control. A further examination of the motivation behind the court's behavior toward the Interior Ministry can be found in a subsequent section.

### 4.3 Additional parameters: Elite cohesion and constraining the judiciary

The elite cohesion feature of the administrative “fire-alarm” thesis cannot be answered using this data set, however, the history of the courts and historical literature regarding colonial Egypt sheds light on these dynamics.<sup>9</sup> Like the elite cohesion element of the administrative “fire-alarm” thesis,

<sup>9</sup>The Mixed Courts existed in the first place because of an international treaty between European governments and indigenous elite modernizers serving within Egypt's pre-colonial government [Brown, 1995]. During the colonial period, these modernizing elites were a critical ally of the British colonial administration and their support was necessary for the protectorate to continue [Daly, 1998]. The Native Court system was a pet project of Egyptian legal modernizers, chief among them the Prime Minister of Egypt during the protectorate's early years Nubar Pasha [Wood, 2016]. The continued existence of the courts throughout the protectorate period suggests that the British saw the Mixed Courts system as a way in which to convince the elite modernizers to support the protectorate as well as as a forum in which to advance colonial interests [Tignor, 2015]. This analysis is further supported by the fact that despite initial opposition from London [Ziadeh, 1968], the British established the similarly-structured Native Court system in 1883, one year following declaration of a British protectorate over Egypt.

the government's methods to containing an administrative “fire-alarm” judiciary go beyond the purview of the data set.<sup>10</sup>

In sum, the Mixed Courts acted as an administrative “fire-alarm” for the colonial government. The court's social control and political legitimization features created space for state-citizen contestation, its solution to the principal-agent dilemma reduced the cost of colonial governance, and the system acted as a platform for indigenous elite cohesion with colonial authorities. Entrenched authoritarian regimes are more likely to empower their judicial institutions [Moustafa, 2014], and the British empire certainly fits that mold.

#### 4.4 Explaining the Interior Ministry's policies

Up until this point the paper has discussed the presence of variation across agency in the data, but has not yet discussed possible explanations for it. The following section aims to compare trends observed in the Interior Ministry's cases and the rest of the government cases in order to explain the observed differences and changes in terms of the historical events or happening at the time or colonial policies pursued by the government within the protectorate. The data appears to tell the story of a rule of law institution corrupted by increasingly invasive colonial politics.

As British colonial presence grew in Egypt, prosecutors began to more aggressively push Interior Ministry cases through the Mixed Courts<sup>11</sup>. The following difference-in-difference graphs (Figures 13 and 14) demonstrate that in 1900 and 1902, respectively, there are significant difference in the average of the metric beforehand and then after. In the graph describing the respective agencies' success rates, the government's average (excluding the Interior Ministry) success rate remains relatively flat, if not sloping down slightly between the pre-1901 and post-1900 periods. In contrast, the Interior Ministry's success rate greatly increases between the two time periods. The temporal effect is even more pronounced in the difference between a case's processing time from before and after 1902 for the Interior Ministry and the overall government average, excluding the Interior Ministry. In this case the trends are more noticeably going in opposite directions: the government's average number of days between court decisions increasing at a much faster rate than the Interior Ministry's. Meanwhile, the Interior Ministry experiences a reduction in the number of days it waits between the lower court's decision and the Court of Appeals' final decision over the course of the two time periods.

These chronological divides coincides with the end of the Mahdist War with Sudan in 1899,

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<sup>10</sup>In the data set there is no evidence that the colonial government incentivized judicial-self restraint, fragmented the judicial bureaucracy, and weakened judicial support networks. The historical literature and common sense suggest that a repressive colonial government protected itself and its interests from a potentially overactive judiciary [Brinton, 1950]. The most obvious strategy of colonial control was the continued fragmentation of the Egyptian judicial system, implementing the Native Courts soon after coming to power in 1882. The appointment of international judges to the Mixed Courts likely made the judges entirely dependant on the colonial government for their livelihood. As a result, they likely self-censored and did not develop strong judicial support networks in which to protest the regime. Furthermore, these judges likely saw nothing inherently wrong in a colonial system, so they had no political reason to oppose the British protectorate.

<sup>11</sup> Figure 12 establishes the increasing proportion of Interior Ministry cases in front of the Court of Appeals in 1899 and after the turn of the century. Thus, the time spent between decisions is likely to decrease if the types of cases which dominated that year take a shorter time to process. The other implications of the variation of types of government entity involved in litigation will be discussed in the following chapter. Understanding the relationship between the location of its trial courts and the length of time between decisions are critical pieces of decoding the Mixed Court's bureaucratic practices

and Britain officially coming to grips with its role as a fully-involved colonial power in Egypt [Tignor, 2015]. For both outcome variables, this shift in British colonial mentality coincides with the division of the two periods.

The difference between the success rates of the Interior Ministry and the larger Egyptian government is symptomatic of the British “tough on crime” policy coupled with an attempt to reduce the cost of colonial management. [Booth and Gorman, 2014]. After a political battle between the Egyptian government and the British left the Interior Ministry under direct British supervision, the successive list of British governors sought to reduce crime in order to protect British economic interests in Egypt as well as imperial security interests regarding Egypt's passage to India. The British sought greater control over the Interior Ministry because of public backlash and a feeling of lack of security. In addition to striving for better public security, the British thought more direct control over the Interior Ministry would decrease the costs of administration in this ministry, particularly administrative and police forces [Daly, 1998].

Addressing the significant gap in the processing time for the average and Interior Ministry case also finds an answer in the historical literature. In 1902, the British colonial administration changed the system for recruiting foreign personnel for the Egyptian civil service as a result of the conflict with Sudan. In fact, these changes only affected personnel in the Ministries of Finance and Interior [Tignor, 2015]. This policy change provides an explanation of the significant difference between the difference in processing time before and after 1902. In Figure 14 the government's average increases, likely due to the increased volume of cases in the system after the turn of the century.

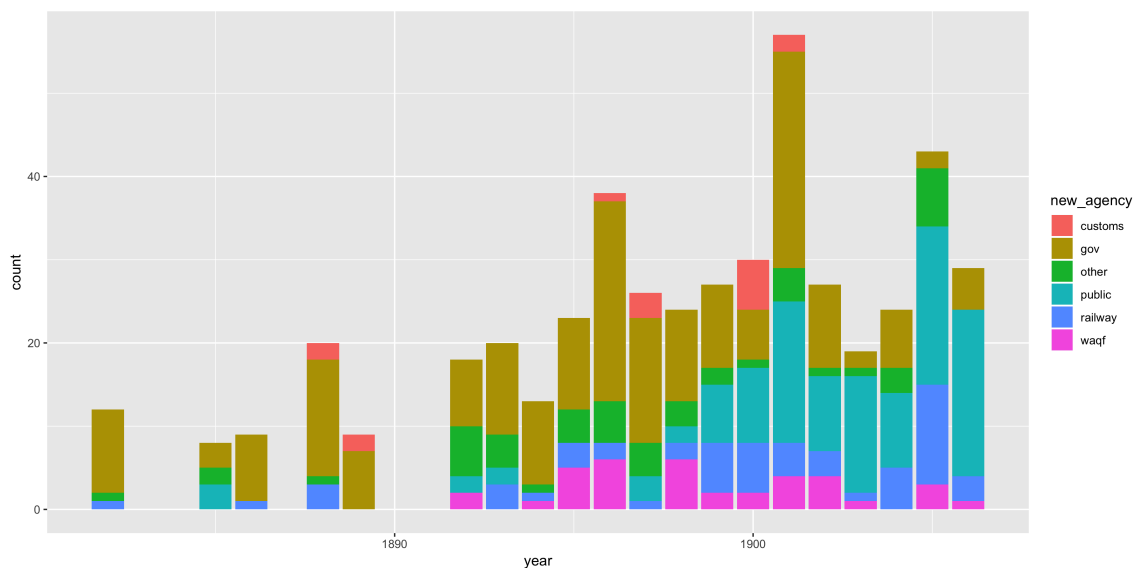


Figure 12: Portion of cases by agency across the years

Both stories point to despite however progressive the Mixed Courts were, over time political squabbles and colonial policy shifts undermined the rule of law.

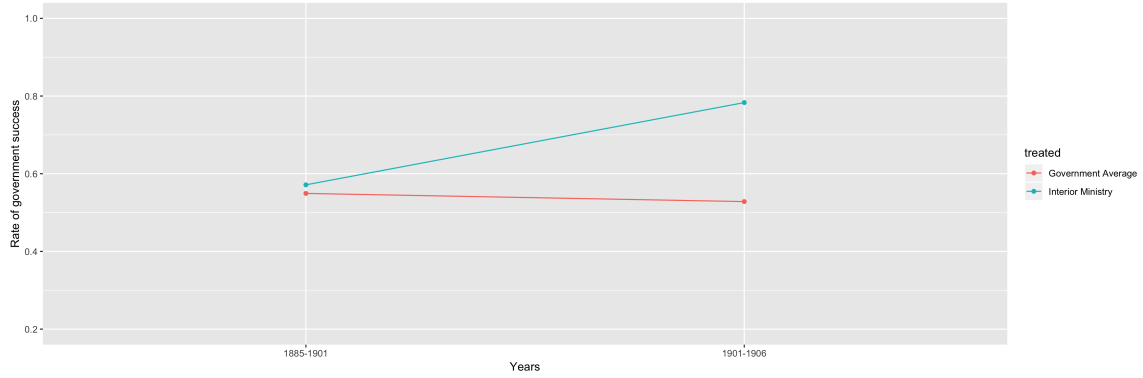


Figure 13: Difference-in-difference of government's success rate

Table 1: Regression output for the difference-in-difference of the government's success rate

<i>Dependent variable:</i>	
	gov_win
time_sep	−0.055 (0.064)
treatedInterior Ministry	−0.012 (0.101)
time_sep:treatedInterior Ministry	0.267** (0.123)
Constant	0.583*** (0.044)
Observations	337
R <sup>2</sup>	0.042
Adjusted R <sup>2</sup>	0.033
Residual Std. Error	0.479 (df = 333)
F Statistic	4.810*** (df = 3; 333)
<i>Note:</i> *p<0.1; **p<0.05; ***p<0.01	

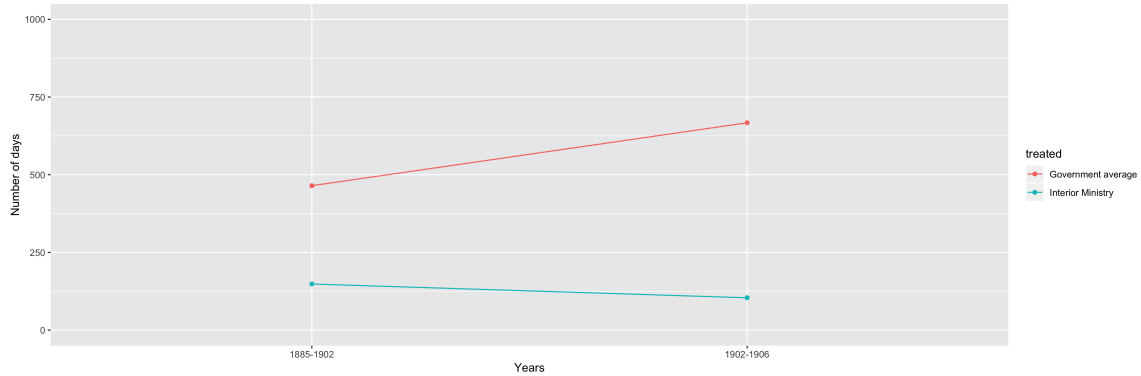


Figure 14: Difference-in-difference of processing time

## 5 Conclusion

This paper explores the Mixed Court's role in and relationship with the British colonial government during the first quarter century of British colonial rule. Its findings illustrates a nascent rule of law environment hijacked for the political benefit of the British colonial administration. Based on the Mixed Court's rule of law legacy, the paper sheds light on historical patterns of autocratic governance in Egypt.

The analysis of this study discusses, then complicates, two theoretical models for understanding colonial court systems. The liberal window-dressing theory argues that courts hide their social control and political legitimization projects under the guise of the rule of law [Shapiro, 1986]. In comparison, the administrative “fire-alarm” theory suggests authoritarian governments allow space for citizen-state contestation in order to monitor lower level bureaucratic actors [McCubbins and Schwartz, 1984] to mitigate the principal-agent problem prevalent in many autocracies [Moustafa, 2014]. In the real-world, however, no colonial judicial institution will perfectly encapsulate only one theory for its entire existence because the institution reflects its colonizer's mutable policy priorities.

The study's results confirm the interwoven nature of both colonial court theories. This paper argues that the Mixed Courts performed rule of law functions as part of an administrative “fire-alarm” court system. Meanwhile, the courts also were extremely deferential to the colonial administration's police disputes. The lack of uniformity in the government's success rate as well as the variation across agency suggest that the courts acted like administrative “fire-alarm” institutions. Based a combination of data analysis and the historical record, the court's behavior fits with the principal-agent dynamic, elite cohesion and judicial constraints of the administrative “fire-alarm” oversight model. As British colonial administration increased its control over the Interior Ministry to satisfy its own security and commercial interests, the court became increasingly acquiescent to the government's claims. The growing British supervision of the Egyptian bureaucracy politicized the rule of law and poisoned Egypt's developing rule of law climate.

Before discussing the results' implications for rule of law in Egypt and the wider region, this paragraph addresses potential limitations to the results discussed above. As mentioned throughout the paper, there are inherent biases within the data and historical record. All quantitative examinations

of court records must contend with the presence of selection bias in the data. Unknown number of unaccounted factors bar people from pursuing litigation. Especially at the appeals level, a certain level of unknowable bias affects litigants who choose to continue pursuing their case in court. This paper tries to account for these biases in the analysis, however, they do place a limitation on the applicability of the study's results.

This study has significant implications for understanding the development of the rule of law in Egypt beyond the early colonial period. It illustrates the historical precedence for authoritarian rulers of Egypt to expand access to legal system while maintaining tight control over their population through severe police practices.

As the British presence in Egypt persisted, the administration continued to pursue increasingly draconian police practices. Especially in light of the rising nationalist movement after the Dinshaway incident of 1906 [Daly, 1998], British administrators responded to anti-colonial protests with force, ratcheting up its surveillance of Egyptian civil society. Unsurprisingly, the draconian practices of the British military and police greatly contributed to Egyptian resentment of colonial power. Even following the partial independence won in the Revolution of 1919, residual anger toward British policing continued to fuel the Egyptian nationalist movement [Brinton, 1950]. By the end of the British administration, their approach to suppressing the nationalist movement negated much of the administration's rule of law rhetoric [Ziadeh, 1968].

Despite the illiberal end to British colonial rule, the combination of administrative “fire-alarm” courts and aggressive policing continues throughout Egyptian history. As a result, it is of little surprise that Sadat and Mubarak leveraged rule of law adjacent courts to perform bureaucratic oversight while their security services maintained a tight grip on the Egyptian population [Rosberg, 1995]. The norms of these administrative “fire-alarm” courts, such as the right to judicial oversight and the judiciary's ability to constrain political actors, were inherited from the Mixed Court. These norms came to play a significant role in multiple post-colonial political developments in Egypt. From the mid-1980s to the early 2000s, Egypt's Supreme Court issued a series of rulings seen as politically inconvenient for the regime, and “and in some years striking down more laws than it upheld” [Brown, 2012, 3]. This period of relatively robust judicial activism allowed to courts to mold the Egyptian electoral system used during the Mubarak regime. After the 2011 Revolution, the Egyptian Supreme Constitutional Court played a pivotal role in navigating and establishing Egypt's post-Mubarak era [Brown, 2012]. Why would dictatorial regimes share an interest in continuing rule of law norms? Put simply, all three authoritarian regimes benefited from the oversight provided by the administrative “fire-alarm” courts, meanwhile using a highly bureaucratized police force to maintain a tight control over the population. Under each regime, the degree to which the government fostered the rule of law was inherently related to the government's political priorities.

In addition to illustrating Egypt's rule of law development, the case of the Mixed Courts asks bigger questions about the nature and efficacy of rule of law institutions imposed by a third-party. While this study shows the British presence facilitated the execution of the Mixed Courts' rule of law functions, the colonial administration's security policy priorities also undoubtedly undermined the rule of law in Egypt. The interplay between developing rule of law institutions and fulfilling security interests continues to be a question which vexes policymakers today. This dichotomy is particularly salient in Afghanistan. The United States and the international community remain invested in the development of Afghanistan's rule of law. At the same time, however, the international community pursues its security policy goals, namely the removal of the Taliban and Al-Qaeda, by less than

liberal means.

The critical policy question this study leaves unanswered is how does a third-party actor enforce the rule of law while fulfilling the security interests that drove them to seize control in the first place? This study does not attempt provide a clear way forward out of this dilemma. Instead, the rule of law legacy of the Mixed Courts under British colonial rule suggests that threading the needle between the rule of law and security interests is tricky and has lasting consequences to the present day.

## References

- [Booth and Gorman, 2014] Booth, M. and Gorman, A., editors (2014). *The long 1890s in Egypt: colonial quiescence, subterranean resistance*. Edinburgh University Press, Edinburgh. OCLC: ocn823896797.
- [Brinton, 1950] Brinton, J. Y. (1950). The Closing of the Mixed Courts of Egypt. *The American Journal of International Law*, 44(2):303–312.
- [Brown, 2018] Brown, M. (2018). “An Unqualified Human Good”? On Rule of Law, Globalization, and Imperialism. *Law & Social Inquiry*, 43(4):1391–1426.
- [Brown, 1993] Brown, N. J. (1993). The Precarious Life and Slow Death of the Mixed Courts of Egypt. *International Journal of Middle East Studies*, 25(1):33–52.
- [Brown, 1995] Brown, N. J. (1995). Law and Imperialism: Egypt in Comparative Perspective. *Law & Society Review*, 29(1):103–125.
- [Brown, 2012] Brown, N. J. (2012). Egypt’s Judges in a Revolutionary Age. Technical report, The Carnegie Endowment.
- [Christelow, 1985] Christelow, A. (1985). *Muslim Law Courts and the French Colonial State in Algeria*. Princeton University Press.
- [Daly, 1998] Daly, M. W. (1998). The British occupation, 1882–1922. In *The Cambridge History of Egypt*. Cambridge University Press, Cambridge.
- [Dix, 1982] Dix, R. H. (1982). The Breakdown of Authoritarian Regimes. *The Western Political Quarterly*, 35(4):554–573.
- [Dorsett and Hunter, 2010] Dorsett, S. and Hunter, I., editors (2010). *Law and politics in British colonial thought: transpositions of empire*. Palgrave studies in cultural and intellectual history. Palgrave Macmillan, New York, NY, 1. ed edition. OCLC: 846044191.
- [Epstein and Posner, 2017] Epstein, L. and Posner, E. A. (2017). The Decline of Supreme Court Deference to the President. *SSRN Electronic Journal*.
- [Galanter, 1974] Galanter, M. (1974). Why the ”Haves” Come out Ahead: Speculations on the Limits of Legal Change. *Law & Society Review*, 9(1):95–160.
- [Gandhi and Lust-Okar, 2009] Gandhi, J. and Lust-Okar, E. (2009). Elections Under Authoritarianism. *Annual Review of Political Science*, 12(1):403–422.

- [Ginsburg and Moustafa, 2008] Ginsburg, T. and Moustafa, T., editors (2008). *Rule by law: the politics of courts in authoritarian regimes*. Cambridge University Press, Cambridge [UK] ; New York.
- [Hanley, 2017] Hanley, W. (2017). *Identifying with Nationality: Europeans, Ottomans, and Egyptians in Alexandria*. Columbia University Press.
- [Harold H. Tollefson, 1990] Harold H. Tollefson, J. (1990). The 1894 British Takeover of the Egyptian Ministry of Interior. *Middle Eastern Studies*, 26(4):547–560.
- [Hoyle, 1985] Hoyle, M. S. W. (1985). The Mixed Courts of Egypt 1886-1895. *Arab Law Quarterly*, 1:562–576.
- [Hoyle, 1986a] Hoyle, M. S. W. (1986a). The Mixed Courts of Egypt 1875-1885. *Arab Law Quarterly*, 1(4):436–451.
- [Hoyle, 1986b] Hoyle, M. S. W. (1986b). The Structure and Laws of the Mixed Courts of Egypt. *Arab Law Quarterly*, 1(3):327–345.
- [Jacob, 1996] Jacob, H. (1996). *Courts, Law, and Politics in Comparative Perspective*. Yale University Press, New Haven.
- [Karaman and Pamuk, 2010] Karaman, K. K. and Pamuk, (2010). Ottoman State Finances in European Perspective, 1500-1914. *The Journal of Economic History*, 70(3):593–629.
- [Kuran, 2003] Kuran, T. (2003). Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation. SSRN Scholarly Paper ID 475205, Social Science Research Network, Rochester, NY.
- [McCubbins and Schwartz, 1984] McCubbins, M. D. and Schwartz, T. (1984). Congressional Oversight Overlooked: Police Patrols versus Fire Alarms. *American Journal of Political Science*, 28(1):165–179.
- [Merry, 1988] Merry, S. E. (1988). Legal Pluralism. *Law & Society Review*, 22:869–896.
- [Moustafa, 2014] Moustafa, T. (2014). Law and Courts in Authoritarian Regimes. *Annual Review of Law and Social Science*, 10(1):281–299.
- [Owen, 1993] Owen, R. (1993). *The Middle East in the world economy, 1800-1914*. I.B. Tauris, London.
- [Rosberg, 1995] Rosberg, J. H. (1995). *Roads to the rule of law : the emergence of an independent judiciary in contemporary Egypt*.
- [Shapiro, 1986] Shapiro, M. (1986). *Courts: A Comparative and Political Analysis*. University of Chicago Press, Chicago.
- [Thompson, 1975] Thompson, E. P. (1975). *Whigs and hunters : the origin of the Black act /*. New York, Pantheon Books,, 1st american ed. edition.
- [Tignor, 2015] Tignor, R. L. (2015). *Modernization and British Colonial Rule in Egypt, 1882-1914*. Princeton University Press. Google-Books-ID: Hh-WCgAAQBAJ.
- [Wilner, 1975] Wilner, G. (1975). The Mixed Courts of Egypt: A Study on the use of Natural Law and Equity. *Ga. J. Int'l & Comp. L.*, 5(407):24.



- [Wood, 2016] Wood, L. (2016). *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875-1952*. Oxford University Press. Google-Books-ID: MGH0DAAAQBAJ.
- [Ziadeh, 1968] Ziadeh, F. J. (1968). *Lawyers, the rule of law and liberalism in modern Egypt*. Hoover Institution on War, Revolution, and Peace, Stanford University,, Stanford, Calif.,.